

# **EXHIBIT D**

**BASIC**  
**RESEARCH**

FTC v Basic Research, LLC, et al. - Docket No. 9318  
RESTRICTED, CONFIDENTIAL ATTORNEY'S EYES ONLY

Respondents 4th Supplemental Response to FTC RFPs  
Produced 11/16/04  
Document #'s: R0044563 - R0054727

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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In the Matter of

BASIC RESEARCH, L.L.C.,  
A.G. WATERHOUSE, L.L.C.,  
KLEIN-BECKER USA, L.L.C.,  
NUTRASPORT, L.L.C.,  
SOVAGE DERMALOGIC  
LABORATORIES, L.L.C.,  
BAN, L.L.C.,  
DENNIS GAY,  
DANIEL B. MOWREY, and  
MITCHELL K. FRIEDLANDER,

Respondents.

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Docket No. 9318

**RESPONSE OF CERTAIN RESPONDENTS  
TO COMPLAINT COUNSEL'S REQUEST FOR  
PRODUCTION OF DOCUMENTARY MATERIALS AND TANGIBLE THINGS**

Pursuant to Rules 3.31(c) and 3.37(b) of the Federal Trade Commission's Rules of Practice, Respondents Basic Research, LLC., A.G. Waterhouse, LLC, Klein-Becker USA, LLC, Nutrasport, LLC, Sövage Dermalogic Laboratories, LLC, and BAN, LLC (collectively, "Respondents") object and respond to Complaint Counsel's Request for Production of Documentary Materials and Tangible Things ("Request") as follows:

**General Objections**

A. Respondents object to the Request as overbroad and unduly burdensome on the grounds and to the extent that it calls for the production of documents that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

B. Respondents object to the Request on the grounds and to the extent that it is overbroad and unduly burdensome. Respondents will conduct a reasonable search, limited to those locations and files where Respondents deem it reasonably likely that responsive documents will be found without undue burden, for documents responsive to those Specifications to which Respondents do not object.

C. Respondents object to the Request on the grounds and to the extent that it seeks production of documents that are (i) subject to the attorney-client privilege; (ii) subject to attorney and/or party work product immunity; and/or (iii) subject to any other privilege or immunity. Respondents hereby claim such privileges and immunities to the extent implicated by each Specification, and exclude privileged and protected information from its responses. Any disclosure of such privileged or immunized information is inadvertent and is not intended to waive those privileges and immunities.

D. Respondents object to the Request on the grounds and to the extent that it seeks production of confidential, proprietary, or trade secret information. Respondents will produce such material only after an order providing protection to confidential information has been entered in this matter.

E. Respondents object to the Request, and to the Definitions and Instructions therein, on the grounds and to the extent that it purports to impose any obligation on Respondents that is beyond the scope of the Rules of Practice or other applicable law.

F. Respondents object to the Request and the definition of "All documents" (Definition (1) of the Request) on the grounds and to the extent that it purports to require Respondents to search for and produce, or to identify, documents that are not in Respondents' possession, custody, or control.

G. Respondents' objections and responses to the Request, including any production of documents, are not intended to waive or prejudice any objections Respondents may assert now or in the future, including, without limitation, objections as to the relevance of the subject matter of any request, or of the admissibility of any response or document or category of responses or documents, at hearing, trial or any other time. Respondents expressly reserve any and all rights and privileges under the Rules of Practice, applicable evidentiary rules, and any other law or rule, and the failure to assert such rights and privileges or the inadvertent disclosure by Respondents of information protected by such rights or privileges shall not constitute a waiver thereof, either with respect to these responses or with respect to any future discovery responses or objections.

H. Respondents object to the first sentence of Instruction (3) and to Instruction (6) as unduly burdensome and as imposing an obligation beyond what is required by the Rules of Practice with respect to requests for production. Respondents will produce documents as they have been kept in the Respondents' usual course of business.

I. Respondents object to Instruction (7) as unduly burdensome and as imposing an obligation beyond what the Rules of Practice require with respect to requests for production.

J. Respondents object to Instruction (8) in that it seeks submission of certain "originals" in contravention of the Rules of Practice. Respondents will either produce copies or make originals available for inspection; Respondents will not submit originals to Complaint Counsel.

K. Respondents object to Instruction (9) in that it attempts improperly to impose a legal conclusion that can only be reached by the Administrative Law Judge.

### Specific Objections and Responses

Subject to, without waiver of, and in addition to the foregoing General Objections, Respondents respond to each of the Specifications contained in Complaint Counsel's Request as follows:

- 1) Two complete packages, **including** the product contained therein, of each of the **challenged products**. (If any product has been reformulated, provide two complete packages, **including** the product contained therein and all packaging inserts, of each version of the product that has been marketed and sold).

RESPONSE:

Respondents will produce the requested material to the extent it exists.

- 2) All **promotional materials** for the **challenged products**, whether in draft or final form.

RESPONSE:

Respondents object to the extent that this Specification is overly broad, unduly burdensome, or otherwise inconsistent with Respondents' obligations under the Rules of Practice. Subject to and without waiving these objections or the General Objections stated above, Respondents will produce responsive documents that are located after a reasonable search (see general objection (B)).

- 3) All **documents and communications referring or relating to draft or final promotional materials** for the **challenged products**. (This request **includes** but is not limited to contracts, **documents**, and **communications** evidencing the creation, modification, approval, execution, evaluation, dissemination, clearance, or placement of **promotional materials**, and **documents referring or relating to** the contents of draft or final **promotional materials**, **including** but not limited to any claims, messages, or communication in any draft or final **promotional material(s)**.)

RESPONSE:

Respondents object to the extent that this Specification is overly broad, unduly burdensome, or otherwise inconsistent with Respondents' obligations under the Rules of

Practice. Subject to and without waiving these objections or the General Objections stated above, Respondents will produce responsive documents that are located after a reasonable search (see general objection (B)).

4) **All documents and communications referring or relating to the efficacy of the challenged products or their ingredients (including but not limited to tests, reports, studies, scientific literature, written opinions, and any other documents referring or relating to the amount, type, or quality of testing or substantiation) that are relied upon as substantiation of efficacy claims or that tend to refute efficacy claims in promotional materials for any of the challenged products, including the claims alleged in the Complaint (§ 14, 17, 20, 23, 25, 28, 31, 33, 37, 40, and 42) regardless of whether you contest that those claims were made.**

RESPONSE:

Respondents object to the extent that this Specification is overly broad, unduly burdensome, or otherwise inconsistent with Respondents' obligations under the Rules of Practice. Subject to and without waiving these objections or the General Objections stated above, Respondents will produce responsive documents that are located after a reasonable search (see general objection (B)).

5) **All documents and communications referring or relating to the duties, responsibilities, and work performed by each of the Respondents with respect to the advertising, marketing, promotion, and sale of each of the challenged products.**

RESPONSE:

Respondents object to the extent that this request is overly broad, unduly burdensome, or otherwise inconsistent with Respondents' obligations under the Rules of Practice. Subject to and without waiving these objections or the General Objections stated above, Respondents will produce responsive documents that are located after a reasonable search (see general objection (B)).

6) **All documents and communications referring or relating to the marketing of each of the challenged products. (This request includes but is not limited to market research, marketing plans or strategies, and all other document(s) and communications referring or relating to copy tests, marketing or consumer surveys and reports, penetration tests, target**

audiences, recall tests, audience reaction tests, communications tests, consumer perception of any **promotional materials** for any of the **challenged products**.)

RESPONSE:

Respondents object to the extent that this Specification is overly broad, unduly burdensome, or otherwise inconsistent with Respondents' obligations under the Rules of Practice. Subject to and without waiving these objections or the General Objections stated above, Respondents will produce responsive documents that are located after a reasonable search (see general objection (B)).

7) **All documents and communications referring or relating to persons** who are depicted, named, or quoted in **promotional materials** for each of the **challenged products**. (This request **includes** but is not limited to **documents and communications** referencing endorsers and testimonialists and **documents** identifying the contact information for all **persons** depicted, named, or quoted in those **promotional materials**.)

RESPONSE:

Respondents object to the extent that this Specification is overly broad, unduly burdensome, or otherwise inconsistent with Respondents' obligations under the Rules of Practice. Subject to and without waiving these objections or the General Objections stated above, Respondents will produce responsive documents that are located after a reasonable search (see general objection (B)).

8) **All documents and communications referring or relating to complaints or investigations of any of the challenged products or their promotional materials**. (This request **includes** but is not limited to **documents and communications relating to** lawsuits, demand letters, refund requests, warranty or guarantee claims, and complaints or inquiries by local, state, or federal regulators (**including** the U.S. Food and Drug Administration) or other **persons** (**including** but not limited to consumers, competitors, and entities such as the Better Business Bureau or the National Advertising Division).

RESPONSE:

Respondents object to the extent that this Specification is overly broad, unduly burdensome, or otherwise inconsistent with Respondents' obligations under the Rules of



Practice. Subject to and without waiving these objections or the General Objections stated above, Respondents will produce responsive documents that are located after a reasonable search (see general objection (B)).

9) **All documents relating to, referring to, or constituting a dissemination schedule for advertisements relating to the challenged products.**

RESPONSE:

Respondents object to the extent that this Specification is overly broad, unduly burdensome, or otherwise inconsistent with Respondents' obligations under the Rules of Practice. Subject to and without waiving these objections or the General Objections stated above, Respondents will produce responsive documents that are located after a reasonable search (see general objection (B)).

10) All tax returns for **Respondents** for 2000 to present, **including** but not limited to all supporting **documents** and attachments, requests for extension for filing any tax return, and any statement(s) of the reasons for which any extension(s) were requested. (This request **includes** all returns and related information pertaining to the payment of payroll and unemployment taxes, social security taxes, medicare, and federal, state and local and sales, business, gross receipts, licensing, property, and income taxes.)

RESPONSE:

In addition to the General Objections stated above, Respondents object to this Specification because it requests information that is neither relevant nor reasonably calculated to lead to the discovery of relevant information. Tax returns have no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter.

11) **All documents** relating to the corporate structure of each company for which any individual **Respondent** is an officer, director or significant shareholder (25% or more of total shares), including but not limited to Articles of Incorporation; By-laws; Board minutes; annual reports; information showing the date and place of the formation of the Company, and the form of organization of your Company (for example, corporation or partnership); parent organization, if any, and all subsidiaries and affiliates; annual or periodic filings with State or Federal authorities regulating corporations; the names of all directors; the name and title of all officers, supervisors, and managers; organizational charts; **Documents** showing the ownership interests of all owners; **Documents** describing the duties, responsibilities and authority of all officers,

managers, directors, and supervisors employed by **you**; and any Documents delegating authority to engage in any act on behalf of **you** or act as agent for **you**.

RESPONSE:

Respondents object to the extent that this Specification is overly broad, unduly burdensome, or otherwise inconsistent with Respondents' obligations under the Rules of Practice. In addition, Respondents object to this Specification to the extent that it requests documents relating to companies that are not Respondents here because it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of relevant information. Respondents further object to this Specification as vague and ambiguous because (a) the relationship between the term "individual **Respondent**" in the Specification and "**Individual Respondents**" as that term is defined in Definition (10) is not clear and (b) the Specification interchangeably and inconsistently uses the terms "corporate," "company," "incorporation," and "Company." Subject to and without waiving these objections or the General Objections stated above, Respondents will produce company formation documents (Articles of Organization), by-laws, and annual reports or filings (there are no board minutes), limited to documents that (a) pertain to the company structure of Respondents (defined as Basic Research, LLC., A.G. Waterhouse, LLC, Klein-Becker USA, LLC, Nutrasport, LLC, Söväge Dermalogic Laboratories, LLC, and BAN, LLC), (b) were created on or after January 1, 2000, and (c) are located after a reasonable search (see general objection (B)).

12) Annually, from the date of the first sale of each of the **challenged products** to date, **all documents** that show net and gross sales figures and profit figures for each of the **challenged products**.

RESPONSE:

In a telephone conference with Complaint Counsel on July 21, 2004, Complaint Counsel amended this Specification to eliminate the portion requesting profit figures. In addition

to the General Objections stated above, Respondents object to this Specification because it requests information that is neither relevant nor reasonably calculated to lead to the discovery of relevant information. The net and gross sales figures of the challenged products have no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter.

13) **All documents and communications** consulted or used in preparing your responses to Complaint Counsel's **interrogatories**.

RESPONSE:

In addition to the General Objections stated above, Respondents object to this Specification to the extent that it seeks information protected by the attorney client privilege and the attorney and party work product immunity doctrines. Respondents further object to this Specification as duplicative and unnecessary and thus unduly burdensome because, to the extent the interrogatories seek discoverable information that is also requested by prior Specifications, the documents requested in this Specification are duplicative of prior Specifications. Subject to and without waiving these objections or the General Objections stated above, Respondents will produce responsive documents.

Respectfully submitted,



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*Counsel for Respondent Basic Research,  
L.L.C.*

Dated: August 3, 2004



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**Counsel for Defendants A.G. Waterhouse,  
L.L.C., Klein-Becker USA, L.L.C.,  
Nutrasport, L.L.C., Sovage Dermalogic  
Laboratories, L.L.C., and Ban, L.L.C**

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of August, 2004, I caused the Response of Certain Respondents to Complaint Counsel's Request for Production of Documentary Materials and Tangible Things to be served as follows:

- (1) one copy by first class U.S. mail and one copy by electronic mail to:

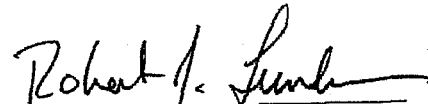
Laureen Kapin  
Joshua S. Millard  
Robin F. Richardson  
Laura Schneider  
Walter C. Gross III  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Suite NJ-2122  
Washington, DC 20580  
email: lkapin@ftc.gov  
jmillard@ftc.gov  
rrichardson@ftc.gov  
lschneider@ftc.gov

- (2) one copy by first class U.S. mail to:

Ronald F. Price  
PETERS SCOFIELD PRICE  
310 Broadway Centre  
Salt Lake City, UT 84111  
*Counsel for Respondent Daniel B. Mowrey*

Richard D. Burbidge  
BURBIDGE & MITCHELL  
215 South State Street, Suite 920  
Salt Lake City, UT 84111  
*Counsel for Respondent Dennis Gay*

Mitchell K. Friedlander  
c/o Compliance Department  
5742 West Harold Gatty Drive  
Salt Lake City, UT 84116

  
Robert J. Lundman

# EXHIBIT E





UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Bureau of Consumer Protection  
Division of Enforcement

Joshua S. Millard  
Attorney

Direct Dial:  
(202) 326-2454

September 22, 2004

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Richard D. Burbidge, Esq. Burbidge & Mitchell 215 S. State St., St. 920 Salt Lake City UT 84111 rburbidge@burbidgeand- mitchell.com	Stephen E. Nagin, Esq. Nagin, Gallop & Figueredo, P.A. 3225 Aviation Ave. 3 <sup>rd</sup> Fl. Miami, FL 33133-4741 snagin@ngf-law.com
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**VIA EMAIL AND U.S. MAIL**

**Re:    *Basic Research et al.*, Docket No. 9318**

Dear Gentlemen:

We have serious concerns with your clients' response to our *First Request for Production of Documentary Materials and Tangible Things* ("Document Requests"). We have identified many discrete categories (and, in some cases, titles) of relevant and responsive documents that Respondents have failed to produce in compliance with our *Document Requests* and the Commission's RULES OF PRACTICE. We hope to resolve these issues with your cooperation by the end of this month.

As you are aware, we served our *Document Requests* nearly three months ago, shortly after the commencement of this case, on June 25, 2004. As you know, it is our view that the *Requests* seek documents and other tangible things that are highly relevant and crucial to this matter. We have served no other requests for documents on your clients in this litigation to date.<sup>1</sup>

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<sup>1</sup> The staff of the Enforcement Division received documents from Basic Research LLC in response to *Civil Investigative Demands* in 2001 and again in April, 2002, and the company volunteered other documents in 2003. Some of these documents pertain to the allegations of the *Complaint*, but others do not. The most recent of the relevant documents produced in advance of this litigation are now many months old.

Although Complaint Counsel has extended your clients the courtesy of stipulating to multiple extensions of time to comply with the *Document Requests*, at this late date, it is still unclear whether Respondents have completed their response. We received product samples on or about August 9<sup>th</sup>, and seven boxes of documents on or about August 18<sup>th</sup>. When we initially raised questions about the scope of the production during our August 23<sup>rd</sup> teleconference, Mr. Feldman advised us, for the first time, that the production was not complete and that other boxes would be forthcoming. We received two boxes on September 9<sup>th</sup>. Last week, we asked Mr. Feldman whether more documents would be forthcoming, but we have received no response. Hence, it remains unclear whether Respondents have completed their response.

The staff has completed its initial review of documents that Respondents have produced to date in response to our June 25<sup>th</sup> *Document Request*. Although we received many consumer refund documents (over 5,000 pages submitted in lieu of answering our Interrogatory 10) and much previously-submitted substantiation (many thousands of pages that were resubmitted not once, but multiple times, despite our request that you not do so), at this point, it is clear that your clients have not fully complied with our *Document Requests*.

Respondents' document production quite literally leaves much to be desired. As discussed below, multiple categories of highly relevant and responsive documents either do not appear in the production, or appear to have been omitted. And we still await your privilege log.

#### **I. Missing Final and Draft Promotional Materials**

First, consider Specification 2, which sought production of "all promotional materials for the challenged products, whether in draft or final form." Your clients pledged to produce responsive documents. Respondents did submit print ads and point-of-purchase promotional materials, but they clearly did not produce *all* final or draft promotional materials.

Your clients have not provided the following materials in response to our *Document Requests*:

- ☐ **A. Final television advertisements.** We have ample reason to believe that Respondents have marketed one or more of the challenged products via television, in multiple versions of 60 or 120-second television spots or in other television appearances. Respondents submitted no video materials whatsoever.<sup>2</sup> All final television advertisements should be produced.
- ☐ **B. Final radio advertisements.** We have ample reason to believe that Respondents have marketed one or more of the challenged products via radio, either in short spots or in program-length radio commercials. Respondents submitted no audio materials whatsoever. Final radio or audio advertisements should be produced.
- ☐ **C. Final telephone marketing materials.** We have ample reason to believe that Respondents have marketed and sold the challenged products to consumers via telephone or inbound telemarketing from your clients' business premises. Respondents submitted no telephone marketing materials. These materials should be produced.

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<sup>2</sup> We are particularly baffled that your clients have failed to produce the direct response television commercials for Leptoprin that contributed to that product's gross sales in the tens of millions.

- ☐ **D. Final Internet content.** We have ample reason to believe that Respondents have marketed the challenged products to consumers via Internet websites, email, and/or streaming online content. Respondents submitted no such materials. These materials should be produced.
- ☐ **E. Draft advertisements.** We have ample reason to believe that Respondents' promotional materials went through a process of creation and review prior to dissemination, and were thereafter revised and re-released in some cases. Respondents produced no draft promotional materials, save for two or three pages of one draft radio advertisement. The absence of draft advertisements in the document production raises serious and disquieting questions concerning your clients' compliance with our previous instructions regarding the retention of documents.<sup>3</sup> We request that you address this issue by immediately producing all drafts of promotional materials.
- ☐ **F. Other examples.** All materials responsive to Specification 2 should be produced. We also specifically ask that your clients produce the following promotional materials that were omitted from, but referenced in, the small sample of emails produced: (1) "Leptoprin explained" attached to R41193; (2) Pedialan supplements fact sheet, R41271; (3) "Leptoprin original ingredients" and drafts thereof attached to R41312, R41467; (4) radio transcript referenced in R42645; (5) Leptoprin call prompts referenced in R42649; (5) Pedialan abstract referenced in R42637; and (6) variations of Leptoprin call-to-actions as referenced in R41156.<sup>4</sup>

## II. Missing Materials Re: Final and Draft Promotional Materials

Next, consider Specification 3, which sought "all documents and communications referring or relating to draft or final promotional materials for the challenged products." As noted in our *Requests*, this request "includes but is not limited to contracts, documents, and communications evidencing the creation, modification, approval, execution, evaluation, dissemination, clearance, or placement of promotional materials, and documents referring or relating to the contents of draft or final promotional materials, including but not limited to any claims, messages, or communication in any draft or final promotional material(s)."

Respondents pledged to produce responsive documents, but they produced only a small sample of documents and communications relating to final promotional materials. Respondents produced almost no documents referring or relating to draft ads (other than a set of emails relating to gel ads in Mexico).

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<sup>3</sup> As you may recall, during the investigation leading up to this action, the staff corresponded with Respondents' counsel, Mr. Nagin, about your clients' obligation to retain documents relating to the investigation. In response to your clients' concerns, we provided instructions concerning the specific types of documents that your clients were required to retain. Before the commencement of this case, we strongly emphasized that your clients must not dispose of Marketing Department materials, including draft advertisements. (Copies of the correspondence between Mr. Nagin and Enforcement Division Associate Director Elaine D. Kolish are attached for your convenience.)

<sup>4</sup> If you contend that these documents were not promotional materials, then they are documents or communications referring to promotional materials, or to the marketing of the challenged products in general, and are thus responsive to *Document Request* Specifications 3 and 6, discussed *infra*.

Your clients have not provided all of the following materials in response to our *Document Requests*:

- ☐ **A. Relevant Emails and Communications.** We have reason to believe, based on the small sample of internal email produced, that Respondents extensively use the Microsoft Outlook program for business email. However, the emails produced to date are from a very limited time period, from August 4, 2003, through July 1, 2004. As you are aware, *all* of the challenged products were marketed before August 2003, in some instances, years before that date. All responsive emails and other communications before and after August 2003 should be produced.
- ☐ **B. Emails and Communications from Respondents Gay and Friedlander.** The small sample of emails contains almost no emails from Respondents Gay and Friedlander. We have reason to believe that these persons have engaged in the marketing of the challenged products, and/or have overseen such marketing. All of their responsive emails and other communications should be produced.<sup>5</sup> You should also produce all other documents referring or relating to these persons if they are otherwise responsive to Specification 2.
- ☐ **C. Training Materials.** We have reason to believe, based on the small sample of emails already produced, that Respondents have internal training materials used to instruct telephone operators in marketing or selling the challenged products. All of these responsive documents and communications should be produced.
- ☐ **D. Public Relations Communications.** We have reason to believe that Respondents have employed an outside public relations firm to communicate with the public regarding their promotional materials and challenged products. All of these responsive documents and communications should be produced.
- ☐ **E. Other Examples.** All materials responsive to Specification 3 should be produced. We also specifically ask that your clients produce the following copies of promotional materials, which were referenced in the small sample of emails produced, but omitted from the document production: (1) the TV reports referenced in R42347; (2) the production schedule attached or referenced in R0041627; (3) Pedalean reports referenced in R0040953; (4) reports on traffic referenced in R0040918.<sup>6</sup>

### III. Missing Materials Re: Respondents' Duties, Responsibilities, and Work

☐ Complaint Counsel believe that your clients have not produced documents responsive to Specification 5, particularly with respect to Respondents Gay and Friedlander. Specification 5 sought "[a]ll documents and communications referring or relating to the duties, responsibilities, and work performed by each of the Respondents with respect to the advertising, marketing, promotion, and sale of

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<sup>5</sup> Additionally, based on the small sample of emails produced, Respondent Gay appears to have employed the "task" feature of Microsoft Outlook to communicate with employees. All responsive communications using this feature should also be produced.

<sup>6</sup> These examples are for illustrative purposes. The RULES do not contemplate putting Complaint Counsel in the position of having to repeatedly point Respondents to their own documents in order to obtain those documents through discovery. We seek production of all responsive documents.

each of the challenged products." Your clients initially pledged to produce responsive documents, but Mr. Feldman's August 27<sup>th</sup> letter suggested that there were no documents responsive to Specification 5. Complaint Counsel believes that Respondents have maintained documents concerning their respective duties, responsibilities, and work with respect to the advertising and sale of the challenged products in the ordinary course of business. You should produce all responsive documents. If you state that you have produced documents responsive to Specification 5, please identify the documents by Bates number.

#### **IV. Missing Marketing Materials**

☐ Additionally, we believe that your clients have failed to comply with Specification 6, which sought "all documents and communications referring or relating to the marketing of each of the challenged products." As noted in the *Document Requests*, this request "includes but is not limited to market research, marketing plans or strategies, and all other document(s) and communications referring or relating to copy tests, marketing or consumer surveys and reports, penetration tests, target audiences, recall tests, audience reaction tests, communications tests, consumer perception of any promotional materials for any of the challenged products."

Your clients pledged to produce documents responsive to Specification 6, but we have been unable to locate them in the document production. If you state that you have produced documents responsive to this Specification, please identify the responsive documents by Bates number.

We have reason to believe that Respondents prepared marketing plans, reports, and forecasts in connection with the marketing of the challenged products. Examples here include (1) the forecast referenced in R42680; and (2) the Leptoprin forecast binder referenced in R41784. We are also aware that Respondents have engaged in copy testing. All documents and communications responsive to Specification 6 should be produced.

#### **V. Missing Materials Re: Product Endorsers and Testimonialists**

☐ Respondents have not fully complied with Specification 7, which sought "all documents and communications referring or relating to persons who are depicted, named, or quoted in promotional materials for each of the challenged products." As noted in the *Document Requests*, this request "includes but is not limited to documents and communications referencing endorsers and testimonialists and documents identifying the contact information for all persons depicted, named, or quoted in those promotional materials."

Your clients pledged to produce documents responsive to Specification 7, but Respondents did not produce documents and communications referring or relating to all of the endorsers depicted, named, or quoted in promotional materials. We have previously corresponded with you concerning Respondent Mowrey's objections, to clarify that he need produce only those documents referring or relating to his participation or appearance in promotional materials for the challenged products. You should produce all documents responsive to Specification 7. If you state that you have produced all documents responsive to this Specification, please identify the responsive documents by Bates number.

#### **VI. Missing Materials Re: Complaints**

☐ Respondents have not fully complied with Specification 8, which sought "all documents and communications referring or relating to complaints or investigations of any of the challenged products or

their promotional materials." As noted in the *Document Requests*, this request "includes but is not limited to documents and communications relating to lawsuits, demand letters, refund requests, warranty or guarantee claims, and complaints or inquiries by local, state, or federal regulators . . . or other persons (including but not limited to consumers, competitors, and entities such as the Better Business Bureau or the National Advertising Division)."

Your clients pledged to produce documents responsive to Specification 8, but we have reason to believe that Respondents did not produce all consumer complaints, particularly those relating to promotional materials for the challenged products. Respondents also redacted last names and contact information from many consumer complaints, contrary to our express instructions regarding redactions. You should produce all documents responsive to Specification 8 (including unredacted versions of previously-submitted documents), or state that you have already done so.

## VII. Missing Corporate Documents

☐ Respondents have not complied with Specification 11, which sought "all documents relating to the corporate structure of each company for which any individual Respondent is an officer, director or significant shareholder." As noted in the *Document Requests*, this request included, among other things, articles of incorporation, documents showing the form of organization for each Corporate Respondent and all subsidiaries and affiliates, organizational charts, and documents describing the duties, responsibilities and authority of all Respondents' officers, managers, directors, and supervisors.

Your clients pledged to produce a narrower category of materials—company formation documents, by-laws, and annual reports and filings limited to documents that pertain to the company structure of Corporate Respondents, not their affiliates,<sup>7</sup> that were created on or after January 1, 2000, and are located during your limited search for documents. We also recall that Respondent Gay had not taken a definite position with respect to this Specification. However, we are unable to verify that your clients produced any documents at all in response to Specification 11. You should produce all responsive documents. If you state that you have produced documents responsive to Specification 11, please identify the responsive documents by Bates number.

## VII. Other Issues with Your Clients' Response to the *Document Requests*

Complaint Counsel has other serious issues with your clients' response to Complaint Counsel's *Document Request*. We hope to quickly resolve this issues with your assistance.

☐ A. First, Respondents have yet to produce a privilege log, or even a date on which a privilege log might be produced. We were surprised at Mr. Feldman's early assertion that there would be no privilege log accompanying your initial production, which included print ads and substantiation. Your *Initial Disclosures* indicated that Mr. Nagin was responsible for reviewing product substantiation, and that another attorney, Mr. Swallow, was responsible for reviewing ad copy. The *Initial Disclosures* also

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<sup>7</sup> If your clients take the position that they have produced all responsive documents in response to our *Document Requests*, and their other responsive documents lie within the sole possession, custody, or control of Respondents' affiliates or other business entities related to them, then their refusal to provide documents and information relating to those affiliates in response to Specification 11 may well be impeding our search for relevant evidence.

identified other counsel and law firms. Accordingly, we expected that counsel had at least generated and retained *some* identifiable attorney work product in the course of reviewing substantiation and ad copy, and that you would identify privileged materials in compliance with RULE OF PRACTICE 3.38(A).

Complaint Counsel have repeatedly asked for Respondents' privilege log. Mr. Feldman has indicated that he will reconsider his earlier assertion. We sent *Document Requests* to your clients nearly three months ago—almost a full month in advance of Respondents' discovery requests.<sup>8</sup> We ask that you produce your privilege log now.

□ B. Next, we are concerned that Respondents have arbitrarily limited the scope of their search for documents responsive to our *Document Requests*. Your clients raised a generic objection that our discovery requests were unduly burdensome. During our August 23<sup>rd</sup> teleconference, we asked you to explain the nature of this burden, or to state facts supporting the assertion that our discovery requests are unduly burdensome. You flatly refused to explain this statement then, and you have not done so since. We again insist that you explain the grounds for your objection, and conduct a complete search.

Your clients' responses state that their search for documents will be "limited to those locations and files where Respondents deem it reasonably likely that responsive documents will be found without undue burden, for documents responsive to those Specifications to which Respondents do not object." We ask your clients to reconsider their position. They cannot reasonably refuse to search the bins full of documents that they have generated and retained.<sup>9</sup>

As we discussed last month, we object that your clients are refusing to produce documents that are within their actual or constructive possession, custody, or control. If you are aware of any non-privileged, responsive documents at Respondents' business premises that you have not produced, we demand that you inform us of that fact immediately and explain why the documents have not been produced.

□ C. Next, we again reiterate our request that Respondents comply with Instruction 5 of our *Document Request*, which stated as follows: "All information submitted shall be clearly and precisely identified as to the Respondent(s) who produced the information. You shall do so by: (a) marking each submitted item with a notation identifying the Respondent(s) who produced that item; or (b) providing a separate list of submitted items, in numeric 'Bates' document tracking number order, that identifies the Respondent(s) who produced each item." During our August 23<sup>rd</sup> teleconference, Mr. Feldman initially stated that Respondents would *not* identify from whose files their documents were produced. However, he advised us by letter on August 27<sup>th</sup> that Respondents will, in fact, comply with Instruction 5. The two boxes submitted on September 9<sup>th</sup> were not identified as to the producing party, as Mr. Feldman had promised in his letter. We are still waiting for your clients to comply with Instruction 5.

D. We note that with respect to Specification 12, your clients have declined to produce net sales figures for the challenged products. Respondents objected that net sales figures "have no

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<sup>8</sup> Although Complaint Counsel has had less time in which to work, we are working to compile a privilege log for Respondents as we have previously discussed.

<sup>9</sup> As you will recall, we have offered to search Respondents' bins for responsive documents and negotiate a "claw-back" agreement to handle privileged materials.

relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter." We understand this objection to mean that Respondents are withholding net sales figures on the grounds that they are irrelevant to this action. If our understanding conflicts with yours, please advise us immediately so that we can discuss.

- ☐ E. Also, we ask that you confirm that you have completed your response to Specs 4 and 9.

### **VIII. Outstanding Issues with Your Clients' Responses to the *Interrogatories***

Several weeks ago, on September 2<sup>nd</sup>, my colleague Laureen Kapin sent you a letter addressing issues concerning Respondents' objections and responses to our *Interrogatories*. You will recall that Ms. Kapin sent this letter at Mr. Feldman's suggestion following our September 1<sup>st</sup> teleconference.<sup>10</sup> You have not responded to her letter in the intervening three weeks.

☐ A. One of the most important issues addressed in Ms. Kapin's September 2<sup>nd</sup> letter is the fact that Respondents failed to submit a complete response to *Interrogatories* 1 and 2. The first *Interrogatory* sought information with respect to Respondents' respective "duties, responsibilities, or work" on "promotional materials for each of the challenged products." Your answers did not specify the advertisements and the challenged products for which each listed person performed duties, responsibilities, or work. The second *Interrogatory* sought information about the "creation, development, evaluation, approval and manufacture of the challenged products." Your clients objected and referenced their answer to *Interrogatory* 1, which was unresponsive, as the first *Interrogatory* related primarily to advertising and substantiation, not the development of the challenged products themselves.

Your objections that these two *Interrogatories* seek irrelevant information, are vague or unduly burdensome, invade your rights of privacy, and so forth, are unpersuasive. Your clients have not fairly answered these *Interrogatories*. They should do so now.

☐ B. Another important issue addressed in Ms. Kapin's letter relates to your clients' objections to Complaint Counsel's *Interrogatories* 5 and 6 and the incomplete response to our *Interrogatory* 9. We took the trouble to clarify *Interrogatory* 5, revise *Interrogatory* 6, and note the gap in the responses to *Interrogatory* 9, all in writing, at Mr. Feldman's request, after the September 1<sup>st</sup> teleconference. We request that your clients now answer these *Interrogatories* as we discussed.

Your clients have had several weeks to consider Ms. Kapin's September 2<sup>nd</sup> letter. We now request the courtesy of a response to that letter, and we ask that your clients finally and fully answer our *Interrogatories*.

### **IX. Other Outstanding Matters**

As you are well aware, Complaint Counsel is still waiting for certain non-parties to produce subpoenaed "documents sufficient to show all compensation, distributions, payments, royalties, and all

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<sup>10</sup> A copy of Ms. Kapin's September 2<sup>nd</sup> letter is attached for your convenience. Please see that letter for a full discussion of pending issues with your clients' *Interrogatory* responses.



other benefits in any form that each of the Respondents has made to [them], or to others on [their] behalf, in connection with the formulation, development, manufacture, testing, advertising, marketing, promotion, or sale of each of the challenged products." The subpoena recipients we refer to are George Evan Bybee, Majestic Enterprises, Inc., Nathalie Chevreau, Michael Meade, D.G. Enterprises, Inc., Western Holdings, LLC, Winterhawk Enterprises, LLC, and Winterfox, LLC. We can demonstrate that each of these recipients has some ownership, control, or employment relationship to Respondents.

The Administrative Law Judge's *Order* on your *Motion to Quash* granted these eight subpoena recipients until August 28, 2004, to comply and produce the requested discovery. None of these entities has complied to date.

Mr. Feldman advised us in writing on August 27<sup>th</sup> that these subpoena recipients "will respond directly to Judge McGuire's order." He told us that he expected we "will soon receive correspondence from counsel engaged to represent these parties." We believe that Mr. Feldman's statements were based on the statements of his clients, who own, control, or employ (either directly or indirectly) these subpoena recipients. However, Complaint Counsel have not heard from these subpoena recipients. Despite our repeated requests, Mr. Feldman has not identified their counsel.

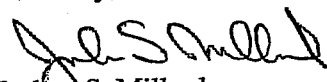
We will communicate directly with these subpoena recipients one last time to request their immediate compliance. Absent their compliance, Complaint Counsel will present the facts of these entities' violation of the Administrative Law Judge's *Order* to the Court.

## X. Conclusion

Lastly, please note that the concerns expressed in this letter are based on our review of the Respondents' document production and interrogatory responses to date. We have tried to make this letter as comprehensive as possible, but as we continue to examine the discovery responses, we may have other issues that we will bring to your attention.

We hope that the parties can resolve these serious issues by the end of this month without the need for Complaint Counsel to seek judicial intervention. We will call Mr. Feldman this afternoon to arrange a teleconference on these issues. Thank you for your attention.

Sincerely,

  
Joshua S. Millard  
Attorney, Division of Enforcement

cc: Mitchell K. Friedlander, *pro se*  
5742 West Harold Gatty Dr.  
Salt Lake City, UT 84116  
[mkf555@msn.com](mailto:mkf555@msn.com)

enclosure (seven pages)

# EXHIBIT F

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## Editorial Review

# Regulation of adipose cell number in man

Johannes B. PRINS and Stephen O'RAHILLY

Departments of Medicine and Clinical Biochemistry, University of Cambridge, Addenbrooke's Hospital,  
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4. In adipose tissue, known molecular regulators of adipose cell number include insulin, ligands for the peroxisome proliferator activated receptor- $\gamma$ , retinoids, corticosteroids and tumour necrosis factor- $\alpha$ . The net effect of these and other regulators is to effect a concerted alteration in adipocyte volume and number. This review largely focuses on the control of fat cell acquisition and loss and the influence of these processes on adipose tissue mass and regional distribution.

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Adipose tissue has a characteristic and unique feature in its enormous potential for volume (and hence mass) change. For example, the major tissue alteration that occurs in an individual whose weight increases from 70 to 150 kg is the quadrupling of fat mass - the skeletal and muscle mass remaining relatively (compared with the change in fat mass) unchanged. Should this individual then, by reducing energy intake but maintaining nutrition, slowly return to his 'ideal' weight, the reverse would occur with marked loss of adipose tissue and relative sparing of skeletal and muscle mass. How can adipose tissue accommodate these changes, what are their short- and long-term effects, and how are these processes regulated? Recent progress in our understanding of factors regulating adipose mass has provided some insight into these questions, and the aim of this review is to examine the contribution of changes in adipose cell number to the regulation of adipose tissue mass.

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## Editorial Review

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2. Increases in adipocyte number occur via replication and differentiation of preadipocytes, a process which occurs throughout life. Decreases in adipocyte number occur via preadipocyte and adipocyte apoptosis, and possibly adipocyte dedifferentiation.

3. Overall regulation of adipose mass involves endocrine, paracrine and possibly autocrine systems. Hypothalamic centres appear to control appetite, metabolic rate and activity levels in a co-ordinated manner. Within the hypothalamus, known weight regulatory molecules include glucagon-like peptide-1, neuropeptide Y and leptin. Leptin is a major afferent signal from adipose tissue to the hypothalamus, providing information on overall adipose tissue mass. However, the precise means by which the hypothalamus signals to adipose tissue is less well understood.

4. In adipose tissue, known molecular regulators of adipose cell number include insulin, ligands for the peroxisome proliferator activated receptor- $\gamma$ , retinoids, corticosteroids and tumour necrosis factor- $\alpha$ . The net effect of these and other regulators is to effect a concerted alteration in adipocyte volume and number. This review largely focuses on the control of fat cell acquisition and loss and the influence of these processes on adipose tissue mass and regional distribution.

is considerable evidence that the incidence of both disorders is increasing, and therefore it is obvious that effective treatments or interventions for both disorders would alleviate much suffering, and may also reduce healthcare costs significantly. It is for this reason that adipose tissue research has undergone a resurgence in recent years – a resurgence buoyed by some major advances in our understanding of the pathophysiology of this complex tissue. It is now recognized to be a biologically active and dynamic tissue, with major endocrine and possibly immunological roles as well as its 'traditional' function as an energy storage depot.

Adipose tissue has a characteristic and unique feature in its enormous potential for volume (and hence mass) change. For example, the major tissue alteration that occurs in an individual whose weight increases from 70 to 150 kg is the quadrupling of fat mass – the skeletal and muscle mass remaining relatively (compared with the change in fat mass) unchanged. Should this individual then, by reducing energy intake but maintaining nutrition, slowly return to his 'ideal' weight, the reverse would occur with marked loss of adipose tissue and relative sparing of skeletal and muscle mass. How can adipose tissue accommodate these changes, what are their short- and long-term effects, and how are these processes regulated? Recent progress in our understanding of factors regulating adipose mass has provided some insight into these questions, and the aim of this review is to examine the contribution of changes in adipose cell number to the regulation of adipose tissue mass.

## INTRODUCTION

Obesity is common, and is a major cause of, or contributor to, morbidity and mortality in Western societies. To a lesser extent, subnormal amounts of adipose tissue, as in anorexia nervosa, also have significant associated morbidity and mortality. There

## EVIDENCE FOR OVERALL REGULATION OF ADIPOSE MASS

Over the long term, adipose tissue mass reflects the net balance between energy expenditure – determined largely by basal metabolic rate (BMR) and exercise – and energy intake (quantity and type

LN008360

Key words: adipocyte, apoptosis, differentiation, obesity, preadipocyte.

Abbreviations: BMR, basal metabolic rate; PPAR- $\gamma$ , peroxisome proliferator activated receptor- $\gamma$ ; TNF, tumour necrosis factor.

Correspondence: Prof. Johannes B. Prins, Department of Medicine and Clinical Biochemistry, University of Cambridge, Level 5, Addenbrooke's Hospital, Hills Road, Cambridge CB2 2QQ, UK.

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## Editorial Review

## Regulation of adipose cell number in man

Johannes B. PRINS and Stephen O'RAHILLY

*Departments of Medicine and Clinical Biochemistry, University of Cambridge, Addenbrooke's Hospital,  
Cambridge, U.K.*CONFIDENTIAL  
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Correspondence: Professor Stephen O'Rahilly, Departments of Medicine and Clinical Biochemistry, University of Cambridge, Level 5, Addenbrooke's Hospital, Hills Road, Cambridge CB2 2QQ, U.K.

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LN008419

Medical Science (1997) 92, 3-11 (Printed in Great Britain)

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18.6  
17.1

## Editorial Review

# Regulation of adipose cell number in man

Johannes B. PRINS and Stephen O'RAHILLY

Departments of Medicine and Clinical Biochemistry, University of Cambridge, Addenbrooke's Hospital,  
Cambridge, U.K.

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PROPRIETARY  
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Correspondence: Prof.

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LN008468

RUN DATE: 05/09/03

CUSTOMER SERVICE DISTRIBUTION CENTER  
REFUND ENTRY REPORT

PAGE 430

TRANS NO	CUST ID	CUSTOMER NAME / ADDRESS	DATE	PAID BY	SOURCE	OP	QTY	ITEM ID	ITEM DESCRIPTION	EACH	TOTAL
400085592	0275486		04/26/03	VISA	3536560	%	215	-1 P15604	CR LEPTOPRIN 180 COUNT	138.00	-138.00
									REFUND TOTAL		-138.00
			04/03								
400085593	0275486		04/26/03	VISA	3536560	%	215	-1 P15604	CR LEPTOPRIN 180 COUNT	153.00	-153.00
									REFUND TOTAL		-153.00
			04/03								
400085594	0311260		04/26/03	MC	2306905	%	215	1 P15604	CR LEPTOPRIN 180 COUNT	153.00	-153.00
									REFUND TOTAL		-153.00
			02/06								
400085595	0311260		04/26/03	MC	2306905	%	215	-1 P15604	CR LEPTOPRIN 180 COUNT	153.00	-153.00
									REFUND TOTAL		-153.00
			02/06								
400085597	0310280		04/26/03	AMEX	5965557	%	215	-1 P15604	CR LEPTOPRIN 180 COUNT	138.00	-138.00
									REFUND TOTAL		-138.00
			03/04								
400085599	0308051		04/26/03	MC	4195691	%	215	-1 P15604	CR LEPTOPRIN 180 COUNT	153.00	-153.00
									REFUND TOTAL		-153.00
			02/05								
400085600	0257139		04/26/03	DISCOVER	5965557	%	215	-1 P15604	CR LEPTOPRIN 180 COUNT	138.00	-138.00
									REFUND TOTAL		-138.00
400085601	0257139		04/26/03	DISCOVER	5965557	%	215	-1 P15604	CR LEPTOPRIN 180 COUNT	138.00	-138.00
									REFUND TOTAL		-138.00
400085602	0331470		04/26/03	VISA	UNK	%	215	-1 P15604	ACW LEPTOPRIN 180 COUNT	153.00	-153.00
								-1 DISC	DISCOUNT	-15.00	15.00
			10/04						REFUND TOTAL		-138.00
400085604	0295191		04/26/03	VISA	2088079	%	215	-1 P15604	CR LEPTOPRIN 180 COUNT	153.00	-153.00
									REFUND TOTAL		-153.00
			08/04								
400085605	0320630		04/26/03	MC	9519631	%	215	1 P15604	CR LEPTOPRIN 180 COUNT	153.00	-153.00
									REFUND TOTAL		-153.00
			10/03								
400085607	0266386		04/26/03	MC	UPSELL	%	215	-1 P15604	ACW LEPTOPRIN 180 COUNT	138.00	138.00
								1 P16704		00	-163.00
			07/06						REFUND TOTAL		-301.00
400085619	0327859		04/26/03	VISA	2405997	%	215	-1 P15604	CR LEPTOPRIN 180 COUNT	153.00	-153.00
									REFUND TOTAL		-153.00
			04/03								

LN005009

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# EXHIBIT G

# FELDMAN GALE

A T T O R N E Y S A T L A W

MIAMI CENTER, 19<sup>TH</sup> FLOOR  
201 SOUTH BISCAYNE BOULEVARD  
MIAMI, FLORIDA 33131-4332  
TEL: 305.358.5001  
FAX: 305.358.3309

REPLY TO: MIAMI OFFICE

E-MAIL: JFeldman@FeldmanGale.com

PROMENADE WEST, SUITE 315  
880 WEST FIRST STREET  
LOS ANGELES, CALIFORNIA 90012  
TEL: 213.625.5992  
FAX: 213.625.5993

www.FeldmanGale.com

October 8, 2004

Laureen Kapin, Esq.  
Division of Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**Re: Basic Research et al., adv. FTC  
Docket No. 9318**

Dear Ms. Kapin:

This letter memorializes our recent conversations relating to Joshua Millard's September 22, 2004 discovery letter and the subpoena that you served on Potter, Katz, Postal and Ferguson, P.A. (PKPF)

**PKPF:**

As we discussed, PKPF possesses financial reports that include revenue information relating to products other than the Challenged Products. My clients provided this information to PKPF under an express promise of confidentiality. I disclosed to you last week that PKPF possesses revenue information for various non-challenged products and requested agreement that PKPF be permitted to redact this information from the materials that it was preparing to provide in response to your subpoena. Last Thursday, September 30, 2004, we agreed that PKPF would forward all non-objected to materials to the FTC as soon as possible. As to the disputed reports, we agreed that PKPF would redact the disputed information and provide a redacted copy of the reports to the FTC. You reserved your right to ultimately seek un-redacted versions of these reports. You indicated that you want to review the general nature of the documents and then decide whether to continue your demand for un-redacted copies. We agreed to revisit this issue once you have reviewed the redacted reports.

**MILLARD'S SEPTEMBER 22, 2004 LETTER:**

With regard to Mr. Millard's September 22<sup>nd</sup> letter, we have agreed as follows:

1. We will provide DVD's of all final TV and radio spots relating to the challenged products and we will also provide DVD's of the documents that Basic Research, LLC and Ban, LLC have provided in response to your requests for production. These DVD's are being mailed to you today.
2. We reported that all available documents responsive to following categories have been provided:
  - a. Final internet content
  - b. Emails
3. With respect to your request for documents relating to the duties, responsibilities and work performed by each of the Respondents with respect to the advertising, marketing, promotion and sale of each of the challenged products, we advised that no responsive documents exist. Further, we explained that we understood this request to call for documents that set forth what work each Respondent performed in relation to the Challenged Products, e.g., corporate hierarchy charts. You argued that the request calls for a broader range of materials. We disagreed and re-asserted our over breadth objection and suggested that you re-write the request.
4. We originally reported that if draft advertisements exist, they are in the bins that you and I have previously discussed. We still believe that this information may be in those containers. However, since our conversations last week, we have located some draft packaging relating to the challenged products and this information will be forwarded on to you. As an aside, Mr. Nagin has listed some draft advertisements on his privilege log.
5. Regarding the bin inspection, I advised that we are hiring independent contractors to conduct this inspection and that responsive documents from these bins should be produced to you by month's end. We will confirm this date with you as they proceed with the inspection.
6. Regarding Mr. Millard's request for documents listed under the caption of "Other Examples," I advised that we would look for these documents and produce them if found.

7. Regarding Mr. Millard's request for final telephone marketing materials and training materials, we anticipate providing some additional material by next week. We are also checking to see if we have additional public relations communications.
8. Regarding Mr. Millard's request for additional marketing materials, please be advised that no additional market research, marketing plans, surveys, penetration tests, target audiences, recall tests, audience reaction tests, communication tests or consumer perception studies have been located for the challenged products.
9. Ronald Price reported that Dan Mowry has nothing responsive to your request for endorsements documents. I advised that all responsive endorsement documents from the Corporate Respondents have been provided.
10. During our conversation on September 30, 2004, Mr. Millard asked whether all documents relating to complaints about the efficacy and/or advertising of the challenged products have been disclosed. He reported that he has received copies of only two product liability lawsuits. I advised that I would check again for additional responsive materials.
11. With regard to customer complaints, Mr. Millard again requested un-redacted copies of customer complaint records. We previously advised you that un-redacted copies of these documents are not available; however, I agreed to make a new inquiry. This inquiry has been made and there is no access to un-redacted originals of consumer inquiries and complaints.
12. You inquired about Specification 11, which seeks corporate organizational documents for those companies for which any of the individual Respondents is an officer, director or significant shareholder. You advised that the phrase "individual Respondents" refers to Mitchell Freidlander, Dan Mowry and Dennis Gay. As a result of this clarification, we agreed that this request is inapplicable to the Corporate Respondents.
13. Regarding specification 12, we agreed that Respondents do not have to provide profit numbers for the challenged products. The request was limited by agreement to gross and net sales of the challenged products. Nets sales are gross sales adjusted for returns and adjustments. There was uncertainty as to whether these net numbers have been provided and we agreed to follow up on this. We have done this and net sales numbers are not available.



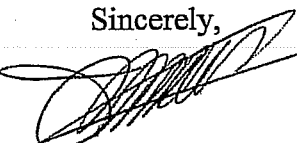
14. Mr. Millard also wanted to know if any affiliate of the Respondents is holding documents responsive to the FTC's document requests. We agreed to make an inquiry on this issue. That inquiry has been made and all responsive documents, to the extent that they are in the care, custody or control of Corporate Respondents, have been produced or withheld for privilege.
15. I advised that all documents in our first production were BAN, LLC materials. With respect to the September 7, 2004 production, I advised that all documents dated through December 2002 emanate from BAN, LLC's and documents from Jan 1, 2003 emanate from Basic Research, LLC.
16. I agreed to provide Ban and Basic's privilege log to FTC by Wednesday, October 6, 2003, which, in fact, occurred. You agreed to provide your privilege log with respect to Basic Research's first request for production by Tuesday, October 12, 2004.
17. Finally, we addressed Judge McGuire's order compelling production of certain financial information relating to the challenged products. I agreed to make inquiry about how you should contact these individuals and entities relating to this order. Unfortunately, I have not had much success in this regard and I would suggest that you directly contact these third parties.
18. Regarding your letter of September 2, 2004, I agreed that the Corporate Respondents would respond to interrogatory 5 as amended in your letter. In that regard, please be advised that the only "substantially similar products," as you have defined that term, are the following:
  - a. Products substantially similar to Anorex and Leptoprin:
    - i. ECA Stack
    - ii. Thermogenics Plus Original, and
    - iii. Thermogenics Plus Quick Start
  - b. Products substantially similar to the Challenged Gels:
    - i. Ripping Gel
19. With regard to interrogatory 2, we agreed to identify individuals who manufacture and/or oversee the manufacture of the challenged products. In that regard, please be advised that Michael Meade oversees manufacturing for Basic Research, LLC. BPI, Inc. has provided manufacturing services for Cutting Gel, Dermalin-APg, and Tummy Flattening Gel. Allure Cosmetic provided manufacturing services for Tummy Flattening Gel. NutraStar and Basic Research, LLC have provided manufacturing services for LeptoPrin and PediaLean.

Laureen Kapin, Esq.  
Division of Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
10/8/2004  
Page 5

20. Finally, as to interrogatory 1, we agreed to provide a supplemental answer that identifies individuals who have done particular promotional work in relation to the challenged products. You agreed to provide a list of the particular promotional materials that you seek information about. Once this list is received, we will forward responsive information to you.

I trust that this letter accurately summarizes the various agreements that we have reached with respect to the stated products. If you believe that I am in error in any respect, I would appreciate a prompt written response.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Jeffrey D. Feldman', is written over a horizontal dotted line. The signature is stylized with a large, sweeping initial 'J'.

Jeffrey D. Feldman  
JDF/mr

# EXHIBIT H

**From:** Brian [REDACTED]  
**Sent:** Wednesday, June 04, 2003 12:27 PM  
**To:** Gary Sandberg; Alan Pearlstein  
**Subject:** [REDACTED] Pedalean Creatives



ped\_eu\_550\_01.htped\_eu\_550\_01.gif  
ml (404 B) (40 KB)

Attached are the creatives for the [REDACTED] Pedialean

Brian Austin

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PL001708

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**PediaLean**

---

**From:** Mitch Friedlander [REDACTED]  
**Sent:** Thursday, March 27, 2003 8:58 AM  
**To:** Carla Fobbs  
**Subject:** Read: Updated: Pedialean Issue



ATT00992.TXT (267

B)

This is a receipt for the mail you sent to  
"Daniel Mowrey" [REDACTED]; "Nathalie Chevreau"  
<[REDACTED]>; "Mitch Friedlander" [REDACTED] "Steph Nagin"  
<[REDACTED]>; "Dennis Gay" [REDACTED] at 3/27/2003 8:42 AM

This receipt verifies that the message has been displayed on the recipient's computer at  
3/27/2003 8:57 AM

PL002324

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INFORMATION

**Carla Fobbs**

---

**From:** Robin [REDACTED]  
**Sent:** Wednesday, November 28, 2001 1:34  
**To:** Carla Fobbs  
**Subject:** Anorex

Dear Ms. Fobbs,

I am writing in follow-up to the emails which my husband, Patrick [REDACTED] recently sent to you. I am an RN with an Master's Degree in the area of health services administration. In addition to my professional work, I am also a member of the [REDACTED] and a newly active member of National Alliance for the Mentally Ill, as well as being the parent of a daughter with anorexia. I suggest you do some research and reading about anorexia nervosa and other eating disorders, and their prevalence and effect on society, especially with regard to the young women to whom you are marketing. Anorexia Nervosa is a mental illness with major physical complications, including heart damage, osteoporosis, and infertility; it also has the highest mortality rate of any mental illness, over ten percent. Anorexia and associated eating disorders are a major epidemic in the U.S. and the incidence is increasing in developed as well as developing countries, in part due to the influence of the media.

While you assert that your product name derives from the Latin term, with which I am fully familiar having studied Latin for four years, I assure you that the young girls and women who see this advertisement at the back of a fashion magazine showcasing emaciated models do not think of any Latin derivations; they will clearly associate the name Anorex with "thinness," the type of unobtainable thinness shown in these magazines. There is currently a public outcry against pro-anorexic websites, and I would suggest to you that promoting a medication named Anorex is in the same category. Your advertisement also pictures a Dr. Daniel B. Mowrey promoting the product, with what appears to be a stethoscope around his neck. Is Dr. Mowrey and MD?

In summary, the marketing of a product named Anorex in a mainstream magazine directed at young women represents either an appalling lack of level of ignorance on the part of your company regarding the implications of the name as well as the target market, or an unconscionable and reckless marketing decision taking into consideration only your company's profits. I am forwarding a copy of this advertisement to the national eating disorder associations, to the head of the local eating disorder support group which is the longest-running support group of its type in the nation, and finally to my daughter's treating physician, who is a psychiatrist specializing in eating disorders and a professor at a nationally renown university medical center as well as a nationally known lecturer, speaker, and author.

I look forward to your reply.

Sincerely,

Robin [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

11/28/2001

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**From:** Don Atkinson  
**Sent:** Monday, June 09, 2003 3:50 PM  
**To:** Brad Skinner  
**Subject:** FYI Product Standing

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Product	Units In Stores	Weeks Inv.	Warehouse Inv.	Weeks Inv.	Unit Sales YTD	Corp. E
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[illegible]

PL002970

6/17/2003

**Carla Fobbs**

---

**From:** Linda Salisbury  
**Sent:** Tuesday, November 27, 2001 3:13  
**To:** Carla Fobbs; Bodee Gay  
**Subject:** FW: Advertisements - Anorex

-----Original Message-----

**From:** Robin [REDACTED]  
**Sent:** Tuesday, November 27, 2001 3:03 PM  
**To:** customerservice@basicresearch.org  
**Subject:** Advertisements - Anorex

I am a senior partner in a national law firm who has a daughter who has suffered from anorexia for the last six years. She has been hospitalized eight times. She almost lost her life on two separate occasions when her heart rate dropped below 34 beats per minute. My daughter's condition has led me to a rather comprehensive study of this disease, which I am sure you are aware is epidemic in our society. With this in mind, I find it hard to comprehend the minds of individuals who would market this product, let alone under the trademarked name of "ANOREX". I can only hope that some smart class action lawyer makes a killing in a lawsuit against your company - if I had the backing of my firm, I would probably be that person, but unfortunately we only represent management. I hope to God we don't represent your company, but if so I will do all in my power to make sure that any such representation is withdrawn. I would welcome any reply to this, but of course don't believe that a company such as this would have the nerve to do so, especially from anyone in higher management. My hope is that you would withdraw the products that you market - or at least rename them. But since this must have come from senior management in the first instance I doubt that this will happen. My second hope is that you are besieged with messages such as this, and that it eventually develops into a backlash that will drive you out of business.

11/28/2001

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[REDACTED]

April 24, 2003

[REDACTED]  
Basic Research  
5742 W. Harold Gatty Drive  
Salt Lake City, Utah 84116

Dear [REDACTED]

We are writing in response to a recent advertisement for your weight-loss diet pill, Anorex. This advertisement claims that "Anorex is much too powerful for the 'casual dieter'" who is "merely attempting to shed five or ten 'vanity' pounds." In addition, you claim that this product can "overcome the genetic implications of obesity." We urge you to carefully evaluate the harmful messages you are sending with this advertisement and to discontinue it immediately.

We have several concerns about the advertisement and claims made about Anorex. First, the name Anorex evokes the image of Anorexia Nervosa, one of the deadly eating disorders that plague millions of Americans. This carefully chosen name, coupled with the claim that your product is not for the casual dieter, implies not only that Anorex is for those who are serious about losing weight, so too is the fatal disease of Anorexia. As I'm sure you understand, this is a very dangerous message to send to a society that is already obsessed with thinness and attaining an unrealistic weight for their body type. Statistics show that eighty percent of American women are dissatisfied with their appearance, and ninety-one percent of women on college campuses diet in an attempt to reach an "ideal body weight."

You also suggest that excess body fat is adversely affecting our health and self-esteem, and that losing weight will instantly increase our self-esteem. This is exactly the type of message that can cause a person to develop an eating disorder. Two major causes of deadly eating disorders are low self-esteem and cultural pressures that value obtaining the perfect, thin body.

In a country where body dissatisfaction, weight concerns, and unhealthy dieting behaviors are pervasive, advertisements such as yours contribute to a dangerous preoccupation with controlling one's size and shape. In the United States, conservative estimates indicate that 5-10 million females and 1 million males are currently struggling with life-threatening eating disorders. More specifically, Anorexia Nervosa has the highest premature mortality rate of any psychiatric disorder. Eating disorders are killing people. Research has shown, and health professionals report, that most patients with eating disorders were dieting at the time their disorder began. Diet pill advertisements, such as the Anorex magazine ads, can fuel an obsession with weight loss that directly contributes to the high incidence of eating disorders.

[REDACTED]

The National Eating Disorders Association is a national not for profit organization dedicated to the elimination of eating disorders and body dissatisfaction. With the help of more than 1,000 activists across the United States, we continually work to educate advertisers and the public about the impact of media messages on body image and eating habits. The recent Anorex advertisement poses a direct threat to the health and happiness of Americans and is misleading to the public. Once again, we urge you to carefully evaluate the harmful messages you are sending with your Anorex ads and to discontinue them immediately.

Thank you for your consideration,

Abbi [REDACTED]  
 Adrian [REDACTED]  
 Alan [REDACTED]  
 Aleli [REDACTED]  
 Alex [REDACTED]  
 Alexandra [REDACTED]  
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Bonnie [REDACTED]  
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 Tabitha [REDACTED]  
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 Zachary [REDACTED]  
 Zoey [REDACTED]

*P.S. We have informed our Media Watchdogs of our efforts and will post this letter to our website.*

# EXHIBIT I



Source: [Legal](#) > [Area of Law - By Topic](#) > [Antitrust & Trade](#) > [Administrative Materials & Regulations](#) > **Federal Trade Commission Decisions** 

Terms: **natural w/1 organics** ([Edit Search](#))

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*2001 FTC LEXIS 31, \**

In the Matter of **NATURAL ORGANICS, INC.**, a corporation, and GERALD A. KESSLER,  
individually and as an officer of the corporation

DOCKET NO. 9294

Federal Trade Commission

2001 FTC LEXIS 31

ORDER ON COMPLAINT COUNSEL'S MOTION TO COMPEL DISCOVERY

March 15, 2001

**ALJ: [\*1]**

James P. Timony, Administrative Law Judge

**ORDER:**

**ORDER ON COMPLAINT COUNSEL'S MOTION TO COMPEL DISCOVERY**

On February 27, 2001, Complaint Counsel filed a Motion to Compel Discovery. Respondents filed their Opposition to this motion on March 12, 2001.

The motion seeks Respondents to produce documents responsive to Complaint Counsel's subpoena duces tecum, falling into four categories: (1) non-disseminated advertisements and actual or proposed modifications to disseminated or non-disseminated advertisements; (2) communications with consumers; (3) DSHEA notices; and (4) financial information. In addition, Complaint Counsel seeks to compel a response to Interrogatory No. 4, which relates to financial information.

For the reasons set forth below, Complaint Counsel's motion is GRANTED, as limited herein.

**1. Non-disseminated advertisements and actual or proposed modifications to disseminated or non-disseminated advertisements**

Complaint Counsel asserts that draft or non-disseminated advertisements are relevant because they can reveal: (1) the message that Respondents intended to convey in the actual disseminated advertisements; (2) the company's true target audience; (3) the purposes for [\*2] which Respondents designed the product; (4) advertising techniques; and (5) good or bad faith of Respondents. Respondents object to producing non-disseminated advertisements and actual or proposed modifications to disseminated or non-disseminated advertisements on the grounds that advertising that has not been disseminated to the public is not relevant.

In FTC proceedings, respondents typically produce drafts of challenged advertisements. E.g. In re Jenny Craig, Inc., 1994 FTC LEXIS 68 (May 16, 1994) (respondents produced tens of thousands of documents constituting creative files, including drafts); In re Rentacolor, Inc., 103 F.T.C. 400, 1984 FTC LEXIS 66, \*16, 38 (April 16, 1984) (initial decision indicating that

drafts of advertisements had been admitted into evidence at the trial). Similarly, under the Federal Rules of Civil Procedure, parties are often required to produce drafts where the message conveyed or the intent of the party is at issue. E.g., *Missouri Portland Cement Co. v. Cargill, Inc.*, 375 F. Supp. 249, 252 (S.D.N.Y. 1974) (In a tender offer battle, where both parties accused the other of making misrepresentations to stockholders, the court required parties to [\*3] serve proposed drafts of advertisements and communications on each other.); *LGS Natural Gas Co. v. McFarland Energy, Inc.*, 1997 U.S. Dist. LEXIS 2411, \*2-3 (E.D. La. 1997) (ordering production of non-privileged drafts of an Agreement for Purchase and Sale where interpretation of the agreement was squarely at issue); *Saxholm AS v. Dynal, Inc.*, 938 F. Supp. 120, 1996 U.S. Dist. LEXIS 16958, \*2 (E.D.N.Y. 1996) (upholding magistrate's order compelling production of non-privileged draft patent applications).

Because such documents are reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses, any non-privileged non-disseminated advertisements for Pedi-Active A.D.D. and any actual or proposed modifications to any disseminated or non-disseminated advertisements for Pedi-Active A.D.D. must be produced within ten days of the date this Order is entered.

## 2. Communications with consumers

Complaint Counsel seeks to compel documents referring or relating to communications between **Natural Organics** and any consumer regarding Pedi-Active A.D.D., or any disseminated advertisement for Pedi-Active A.D.D. Complaint Counsel asserts [\*4] that communications from customers can help to show the target audience; how consumers perceive the advertisements' messages; whether Respondents acted in good or bad faith when consumer feedback indicated that the advertisements conveyed certain messages; and whether consumers understood claimed disclosures or verbal distinctions in ads.

Respondents object to this request as unduly burdensome. Respondents maintain three types of communications with consumers: (1) a database containing the names and addresses of consumers responding to print advertisements; (2) consumer testimonials; and (3) general consumer correspondence. Respondents have already offered to provide Complaint Counsel with the database. Respondents have represented that Complaint Counsel has stated that it does not need any additional consumer testimonials. The principal dispute is over the general consumer correspondence. Respondents assert that producing these communications is overly burdensome because the communications are filed by correspondent's last name, and not segregated by product.

Correspondence from consumers is reasonably expected to yield information relevant to the allegations of the complaint, to [\*5] the proposed relief, or the defenses. See *In re Verrazzano Trading Corp.*, 1976 FTC LEXIS 390, \*3, 6 (April 16, 1976) (ordering production of correspondence between respondents and their customers and warning that failure to produce such documents would justify adoption of complaint counsel's proposed findings that respondents had received frequent complaints about their product). See also *Federal Trade Commission v. Nat'l Inventionservices, Inc.*, 1997 U.S. Dist. LEXIS 16777, \*15 (D.N.J. 1997) (letters from customers used to demonstrate that respondent was aware of customer complaints).

That responding to the subpoena will be burdensome is unquestionable. However, the burden on Respondents in providing this relevant information is not undue or unreasonable. See *In re R.R. Donnelley & Sons Co.*, 1991 FTC LEXIS 272, \*2 (June 12, 1991). See also *In re Exxon Corp.*, 1978 FTC LEXIS 183, \*15-16 (Sept. 8, 1978) ("The defendant may not excuse itself from compliance with discovery by utilizing a system of recordkeeping which . . . makes it unduly difficult to identify or locate [relevant records].").

Respondents are hereby ordered to produce the database within ten days of the date this

Order [\*6] is entered. Although Complaint Counsel seeks to compel production of documents that refer or relate to any communication between **Natural Organics** and any consumer regarding Pedi-Active A.D.D. or any disseminated advertisement for Pedi-Active A.D.D., this request will be limited to any documents that constitute any such communication. Respondents are ordered to provide to Complaint Counsel any correspondence between **Natural Organics** and any consumer regarding Pedi-Active A.D.D. or any disseminated advertisement for Pedi-Active A.D.D., within thirty days of the date this Order is entered. In the alternative, Respondents shall permit Complaint Counsel, or someone acting on Complaint Counsel's behalf, to inspect and copy such correspondence at a time and place agreed to by the parties.

### 3. DSHEA notices

Complaint Counsel seeks to compel Respondents to produce notices regarding any product that **Natural Organics** provided to the Food and Drug Administration ("FDA") pursuant to § 403(r)(6) of the Food, Drug, and Cosmetic Act, 21 U.S.C. § 343(r)(6) ("DSHEA notices"). Respondents object on the grounds that DSHEA notices are not relevant.

The DSHEA notices may be reasonably expected to yield [\*7] information relevant to the allegations of the complaint, to the proposed relief, or the defenses. Further, production of the DSHEA notices will cause no undue burden on Respondents. Accordingly, any DSHEA notices that Respondents have provided to the FDA since January 1, 1999 must be produced within ten days of the date this Order is entered.

### 4. Financial information regarding sales and profits of Pedi-Active A.D.D.; sales of Respondents' other products; and advertising expenditures for Pedi-Active A.D.D.

Complaint Counsel seeks documents sufficient to show the gross sales, in units and dollars, of Pedi-Active A.D.D.; and documents sufficient to show the gross sales, in units and dollars, of all products sold by **Natural Organics** during certain years. In addition, Complaint Counsel seeks to compel a response to Interrogatory No. 4 which asks Respondents to state separately, for each calendar year in which they sold Pedi-Active A.D.D., the total number of units sold, the total dollar amount of sales of the product, the amount spent on advertising for the product, and the total profit from sales of the product. n1

n1 By letter dated March 5, 2001, Complaint Counsel stated that Respondents had provided Complaint Counsel with the suggested retail price for Pedi-Active A.D.D. Accordingly, Complaint Counsel has withdrawn its request to compel such disclosure. [\*8].

Respondents have represented that they have provided Complaint Counsel with the suggested retail price for Pedi-Active A.D.D. and some sales information. Respondents assert that the remaining requested information is not relevant.


Sales and profits from Pedi-Active A.D.D. may be relevant for numerous reasons. See, e.g., *In re Thompson Medical Co., Inc.*, 104 F.T.C. 648, 1984 FTC LEXIS 6, \*389-90 (Nov. 23, 1984) (sales reviewed in evaluating the benefit of a truthful claim and ease of developing substantiation for claim made); *In re Kraft, Inc.*, 114 F.T.C. 40, 1991 FTC LEXIS 38, \*44 (Jan. 30, 1991) (increased sales resulting from the challenged advertisements used as evidence of materiality of claim); *In re Nat'l Dynamics Corp.*, 82 F.T.C. 488, 1973 FTC LEXIS 126, \*36 (Feb. 16, 1973) (sales figures used to demonstrate consumer demand). Advertising costs for Pedi-Active A.D.D. are also relevant. E.g., *In re Stouffer Foods Corp.*, 1993 FTC LEXIS 196, \*69-70 (Aug. 6, 1993) (advertising costs used as a factor in determining whether a violation is serious and deliberate); *Thompson Medical*, 1984 FTC LEXIS 6 at \*413-14 (advertising costs used as evidence of size and duration of advertising campaign, [\*9]

relevant to respondents' efforts to persuade consumers). See also *In re R.J. Reynolds Tobacco Co.*, 1998 FTC LEXIS 174 (Feb. 25, 1998) (granting motion to compel an answer to interrogatory asking for dollars spent on advertising).

Sales of other products and the company's overall sales may be relevant to fencing-in relief. See *In re Stouffer Foods Corp.*, 1993 FTC LEXIS 196, \*69-70 (Aug. 6, 1993) (Whether a broad fencing-in order bears a reasonable relationship to a violation depends upon, among other things, the degree of transferability of the violation to other products.); *In re Jay Norris Corp.*, 91 F.T.C. 751, 1978 FTC LEXIS 378, \*245 (May 2, 1978) ("Given the variety and seriousness of the misrepresentations which occurred in connection with respondents' sale of used cars, it seems appropriate to fence in respondents as to further mail order sales of other types of vehicles, such as trucks, motorcycles, campers and the like.").

Respondents are hereby ordered to produce the following, within ten days of the date this Order is entered: (1) documents sufficient to show the gross sales, in units and dollars, of Pedi-Active A.D.D. in years 1997, 1998, 1999 and 2000; (2) documents sufficient [**\*10**] to show the gross sales, in units and dollars, of all products sold by **Natural Organics**, in years 1997, 1998, 1999 and 2000.

Respondents are further ordered to state separately, for each calendar year in which Respondents have sold Pedi-Active A.D.D., the total number of units of Pedi-Active A.D.D. sold, the total dollar amount of sales of Pedi-Active A.D.D., the amount spent on advertising for Pedi-Active A.D.D., and the total profit from sales of Pedi-Active A.D.D.

Source: [Legal > Area of Law - By Topic > Antitrust & Trade > Administrative Materials & Regulations > Federal Trade Commission Decisions](#) 

Terms: **natural w/1 organics** ([Edit Search](#))

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# EXHIBIT J

New Product

Dermalin-APG™  
reduces  
accumulating  
fat-related  
body fat around  
your waist and  
abdomen

"Put Dermalin-APG™ in a culture dish  
with fat cells and you can literally  
watch them deflate - similar to  
sticking a pin into a balloon."

Dr. Daniel B. Mowery  
Director of Scientific Affairs  
Klein-Becker USA

# Dermalin-APG™: The next generation transdermal fat emulsifier

## Penetrating Gel Emulsifies Fat On Contact

### Dissolves Deep-Stored Body Fat Wherever Applied.

It was October, 1993, in Milwaukee, Wisconsin. More than 400 of the world's foremost weight loss scientists gathered to discuss the latest research at the annual meeting of the prestigious North American Association for the Study of Obesity. Ordinarily not too many people, outside this elite group of experts, would have cared.

But then something extraordinary happened. The results of a double-blind clinical trial were made public for the first time - a topically applied compound that could actually penetrate the skin and shrink a woman's thigh.

Because the paper was being presented by Dr. George Bray and Frank Greenway of the Pennington Biomedical Research Center, two of this country's most respected scientists, even the results of the active substance. And for good reason, the results of the study were undeniable.

The very next day headlines around the world screamed: "Researchers Discover 'High-Starching Compound' - News reports of a 'Fat Loss Compound That Really Works'!" The results Substance That Melts Stubborn Fat On Contact" filed the arrives. No less than The Washington Post.

### Fast Forward Seven Years...

"To call our formula a 'collyre' cream is a misnomer," says Klein-Becker's Dr. Mowery. "Dermalin-APG™ is unique transdermal 'gel' formulation releases fat scores from any problem area. When the fat is released from the back of a woman's thigh, the dimpled appearance disappears because tension on the connective tissue is reduced as stored 'dip' fat is released. However, when the gel is applied to the tummy, waist or hips, a dramatic reduction of stored body fat occurs, even though cellulite isn't an issue."

### The Miracle of Dermalin-APG™

Dermalin-APG™ permits you to spot reduce. Put it on your thighs - stirrer begins. Over time and getting thick around the middle? Just apply Dermalin-APG's transdermal gel to your waist or tummy and watch them shrink in size within a matter of days. You can even apply Dermalin-APG™ to your double chin. Wherever you've got those unsightly lumps and bumps, apply Dermalin-APG™ and they're gone.

*"At \$135.00 a jar  
it better be good..."*

### So What's The Catch?

There are two. While Dermalin-APG™ forces the fat out of adipose tissue cells and into the blood stream to be used as energy, the fat doesn't just disappear. You have to help by increasing physical activity or decreasing calorie intake so the fat isn't reabsorbed.

Secondly, you can't rub Dermalin-APG™ all over your body at the same time. There is simply no way for your body to utilize all the newly released fat. Therefore, "choose your most problematic area first," suggests Dr. Bruce Torne, a member of the Bray-Greenway team and co-administrator of the patented active formula. "Use the product until you get the desired results. Then move on, one problem area at a time, until you've literally melted the fat and molded your body to a more pleasing shape."

## Shrink Hips, Thighs, Waist And Tummy... Even Your Double Chin.

Realized under-coverage House US Patent Nos. 4,575,939 and 4,588,274

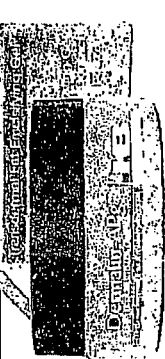
### Could It All Be True?

Frankly, this is where the real story begins. As with so many new discoveries, the most significant and optimal delivery method for this new fat dissolving ingredient, but didn't have a vehicle, or effective base formula to make it work quickly on all parts of the body. In fact, that would take another seven years to perfect.

But that didn't stop the knockout artists from crawling out of the woodwork. By early 1994, there were scores of advertisements for so-called "cellulite" creams. Thousands of women looked to cosmetic counters, pursuing down milder's only to be disappointed. So-called cellulite creams became a joke.

Limited quantities make Dermalin-APG™ difficult to find. Call your local supplement retailer or pharmacy for current availability. For additional information visit online at [www.dermalin.com](http://www.dermalin.com) or call toll-free 1-888-340-1628 ext. DA6547

NSD 00555-RMS-14



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[www.kleinbeckerusa.com](http://www.kleinbeckerusa.com)

## Fast Forward Seven Years...

"To call our formula a 'cellular cream' is a misnomer," says Klein-Becker's Dr. Mowery. "Dermalin-APG™ is a unique transdermal 'gel' formation released from the skin's pores. When the gel is released from the back of a woman's thigh, the dimpled appearance disappears because tension on the connective tissue is reduced as stored 'obese' fat is released. However, when the gel is applied to the tummy, waist or hips, a dramatic reduction of stored body fat occurs, even though cellulite isn't an issue."

### The Miracle of Dermalin-APG™

Dermalin-APG™ permits you to spot reduce, put it on your thighs - summer thighs. Over time and getting thick around the middle? Just apply Dermalin-APG's transdermal gel to your waist or tummy and watch them shrink in size within a matter of days. You can even apply Dermalin-APG™ to your double chin. Remember, you're not just applying lotion and bursas. Apply Dermalin-APG™ and they're gone.

*"At \$135.00 a bottle  
it better be good..."*

### So What's The Catch?

There are two. While Dermalin-APG™ forces the fat out of adipose tissue cells and into the blood stream to be used as energy, the fat doesn't just disappear. You have to help by increasing physical activity or decreasing calorie intake so the fat isn't reabsorbed.

Secondly, you can't rub Dermalin-APG™ at over your body at the same time. There is only so much fat for your body to use. If you rub it all over your body, you're just creating a problem area. Dr. Bruce Ferrel, a member of the Gray-Cresney team and co-inventor of the patented active formula, "Use the product until you get the desired results, then move on. One problem area at a time, until you've literally melted the fat and molded your body to a more pleasing shape."

Limited quantities make Dermalin-APG™ difficult to find. Call your local supplement retailer or pharmacy for current availability. For additional information visit online at [www.dermalin.com](http://www.dermalin.com)

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ext. DA6548

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Dermalin-APG™: The next generation  
transdermal fat emulsifier

## Penetrating Gel Emulsifies

## Fat On Contact Dissolves Deep-Stored Body Fat Wherever Applied.

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But then something extraordinary happened. The results of a double-blind clinical trial were made public for the first time - a topical applied compound that could actually penetrate the skin and shrink a woman's thigh.

Because the paper was being presented by Dr. George Bray and Frank Greenberg of the Harrington Biomedical Research Center, the results were taken seriously. The compound, the most powerful substance was in a hurry to get their hands on a sample of the active substance. And for good reason, the results of the study were undeniable.

The very next day headlines around the world screamed: "Researchers Discover Thigh-Slimming Compound." News reports of a "Fat Lost Compound That Really Works!" and a "Miracle Substance That Melts Stubborn Fat On Contact!" filled the airwaves. No less than the famed Washington Post,

## Shrink Hips, Thighs, Waist And Tummy... Even Your Double Chin.

Emulsifier dissolves cellulite (Lotion, US Price \$69.95/\$34.99 and \$135.00)

dubbed it "The Dream Cream."

### Could It All Be True?

Frankly, this is where the real story begins. As with so many new discoveries, the most effective dosage level and optimal delivery mechanism had yet to be determined. In other words, in 1993, Dr. Greenberg had discovered a new fat-dissolving ingredient, but didn't have a recipe, or effective data formula to make it work subtly on all parts of the body in fact, not would have another seven years to perfect.

But that didn't stop the product from crawling out of the laboratory. By 1994, the thousands of women who wanted to "shrink" their thighs, hips, waist, and tummy were flocking to the counter, plunking down money, only to be disappointed. So-called cellulite cream's became a joke.

[www.dreinbeckerusa.com](http://www.dreinbeckerusa.com)

"Put Dermalin-APG™ in a culture dish  
with fat cells and you can literally  
watch them deflate - similar to  
sticking a pin into a balloon."

Dr. Daniel B. Mowery  
Director of Scientific Affairs  
Klein-Becker USA

Dermaplan. APG reduces the accumulation of age-related body fat around your waist and abdomen.

**"Put Dermalin-APG<sup>®</sup> in a culture dish with fat cells and you can literally watch them deflate - similar to sticking a pin into a balloon."**

Dr. Daniel B. Mowrey, Director of Scientific Affairs  
Klein-Becker was

**Journal of Management Inquiry**

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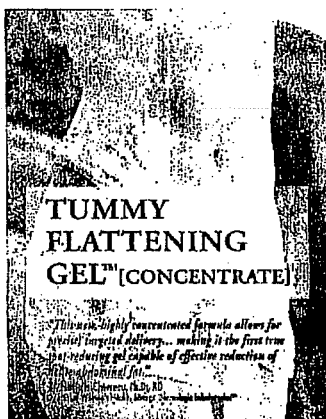
# A FLAT & SEXY TUMMY

**PATENTED TOPICAL GEL REDUCES TUMMY FAT!**  
CAN BE USED IN CONJUNCTION WITH ELECTRIC ABDOMINAL STIMULATORS

**N**o part of the female figure is sexier or more attractive than a flat, sculpted stomach. But maintaining a sleek, shapely midsection is easier said than done — particularly if you're over 25.

Don't blame yourself if your tummy has gotten suddenly out of proportion — blame the natural makeup of a woman's body. Beginning in your early 20's, or after pregnancy, nature conspires to redistribute adipose (fat) tissue... even if you exercise, diet, and maintain an ideal weight, your body shape changes.

Unfortunately, the first sign of the natural ageing process happens in your midsection — that infuriating “tummy pooch” that utterly ruins your look, your wardrobe, and your confidence. But there's a beautiful solution — Savage Tummy Flattening Gel... the topically applied, deep-penetrating concentrate specifically designed to mobilize the persistent, stubborn fat that makes your tummy bulge.



accelerating the breakdown of regional fat cells. Struge Funny Flattening Gel is a quick-peaking gel so thick, concentrated, and smooth some people call it a "fat burning paste"... everyone who's used it simply calls it a "miracle."

## The "Fine Print"

As with all Epidural formulations, there are two caveats. First, because Sôvage Tummy Flattening Gel works by forcing stored fat out of abdominal fat cells and into the bloodstream to be burned as energy, you have to keep burn off the released fat by exercising or decreasing caloric intake so circulating fat is not redeposited. Second, you might be tempted to use more than the recommended dosage of Sôvage Tummy Flattening Gel. Don't... there is simply no way for your body to deal with that much released fat.

**See Visible Results in Approximately 19 Days. Guaranteed!**

Use Savage Tummy Flattening Gel as directed, and you will begin to see dramatic, visible results in approximately 19 days. Remember, nothing

builds more confidence than a youthful, flat, firm, trim tummy. Nothing. And the quickest way to capture a perfectly sculpted midsection is with the new, area-specific, clinically proven, super-concentrated Savage Tummy Flattening Gel. Guaranteed to work for you or your money back... no questions asked!

Savage Tummy Flattening Gel is available at select day spas and specialized cosmeceutical retailers, or call 1-800-917-8096 ext. TG136. Call today! Supplies are extremely limited.

**Savage Tummy Flattening Gel... a formula you can trust, backed by an unconditional, money-back guarantee you can count on.**

**CALL!**

**24 HOURS/TOLL-FREE:**  
**1-800-917-8096**

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## CLINICALLY PROVEN

### How It Works — The Science

It is well documented that when beta adrenergic stimulants such as EpiDrol® are added to a culture dish with adipose (fat) cells, the cells deflate as they release their stored fat — very similar to the way a balloon deflates when stuck with a pin. The evidence is conclusive. EpiDrol has been verified by two published clinical trials and has been awarded dual United States Patents [Nos. 4,525,359 and 4,589,724].

Although many Epidril formulations have successfully targeted fol cells in the thighs and buttocks, researchers have just discovered something most women have known for years: abdominal fol ("Tummy Pooch") isn't "ordinary" fol... it's extremely difficult to target — in part because of its inherent structural density. So, although Epidril-containing gels have been proven to ensnare fol on contact, ordinary transdermal products are simply not powerful enough to precisely target resistant abdominal fol.

## The Power of Söwage Tummy Flattening Gel

The ultimate power of Sövrage Tummy Flattening Gel results from a patent-pending process that allows precise delivery of its ultra-concentrated Epidril base formulation to resistant areas of dense abdominal fat — selectively.

\*All references to the term *Silvage* refer to the full trade name of Silvage Dermologic Laboratories.  
[*Can Med Assoc J* 116: 1987; 643-47; *Obstet Gynecol* 1993; 5415-5485]

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# SOVAGE

New Product Update from Savage Dermal Laboratories

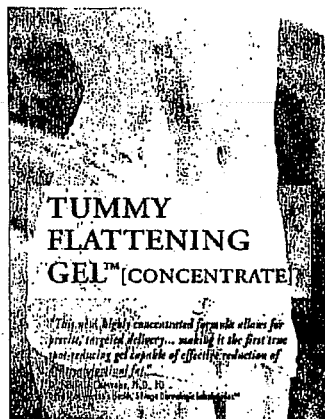
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## CLINICALLY PROVEN!

### How It Works — The Science

It is well documented that when beta adrenergic stimulants such as Epidril® are added to a culture dish with adipose (fat) cells, the cells deflate as they release their stored fat — very similar to the way a balloon deflates when stuck with a pin. The evidence is conclusive. Epidril has been verified by two published clinical trials and has been awarded dual United States Patents (Nos. 4,525,359 and 4,588,724).

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### The Power of Savage Tummy Flattening Gel

The ultimate power of Savage Tummy Flattening Gel results from a patent-pending process that allows precise delivery of its **ultra-concentrated** Epidril base formulation to resistant areas of dense abdominal fat — selectively.

\*All references to the term Savage refer to the full trade name of Savage Dermal Laboratories.  
(© The Tummy Pooch & 1997-2002 by Savage Dermal Laboratories, Inc. All rights reserved.)

NOTE: Many of the claims made here regarding Savage Tummy Flattening Gel rely on a kind of "magic" before anything is a possibly dangerous natural product. If you are seriously considering this product, we strongly recommend that you consult a board-certified plastic surgeon. For more information about board-certified plastic surgeons in your area, contact the American Society of Plastic Surgeons. (1-800-775-7741) [www.aspsurgeons.org](http://www.aspsurgeons.org) or 46 American Street, Third Floor, New York, NY 10013-1515. © 2004

**SOVAGE**  
Dermal Laboratories  
A Division of Skin Care Systems, Inc.

New Product Update by Klein-Becker usa

GNC LiveWell



# Your Child is Overweight.

And it's destroying both your lives.

## European Breakthrough Gives Hope To You And Your overweight Child.

On Thursday, November 8, 2001, at a Washington, D.C. conference hosted by The American Obesity Association, a frightening study entitled, *Stigma and Childhood Obesity: Forty Years and Counting*, was presented to some of this nation's most prominent obesity experts. In the study, children were shown photographs and asked to pick the person they liked the most — the thin person was almost always chosen first, and the obese person always chosen last. While the study's findings may have been groundbreaking news to some experts, the results are no surprise to your overweight child. Rejection because of body size is real — it hurts, and it lasts a lifetime.

Additionally, years of published research confirm that an overweight child will grow up to earn less money, be less likely to marry, more likely to be divorced, complete fewer years of school, and more likely to become a burden on an ageing parent (even if that child becomes leaner in adulthood). The stigma of rejection never goes away — never!

### Your Child is Not the Only Victim

All parents cry for their children. But as difficult as being overweight is for your child, there's another victim — the invisible victim of childhood obesity: it's you. Why? Because nobody blames your child for being overweight — they blame you — the parent. Regardless of how cruel, unfair, or misplaced the blame may be, parents of overweight children are judged harshly (although always in the quietest of whispers) by their friends, neighbors, and relatives. A recent study showed that most people see your child's obesity as evidence of your ignorance and sloth. They blame you. It's your fault for feeding your child too much your fault for letting your child lounge around the house — your fault for working too late, leaving your child to TV, video games, and never-ending bags of chips. Just as your child is stigmatized — so are you. We all know these cruel perceptions aren't true — but they still hurt your quality of life suffers.

At last, there's a safe and effective compound clinically proven to help children lose weight. It's called **PediaLean™**, a proprietary, all natural, high molecular weight, micronized fiber concentrate, available in North America exclusively through Klein-Becker usa.

**Safe, Natural Weight-Control Compound Specifically Developed for Children, Clinically Proven in Europe — Finally Available in America.**

Although **PediaLean™** is the first and only weight-control compound proven safe and effective for overweight children (a success rate of 100% for each and every overweight child who completed the clinical trial; see study results below),

**PediaLean™** is no miracle pill. No weight-control program can succeed without parental support. That's why the professionals at Klein-Becker created [www.WeightLossForChildren.com](http://www.WeightLossForChildren.com).

### Professional Support and a Shoulder to Lean On

**PediaLean™** is more than a great weight-loss formula for your child. It's a complete program of online support accessible to you from home, office, or anywhere you may be. Simply log on to [www.WeightLossForChildren.com](http://www.WeightLossForChildren.com) — the exclusive, easy-to-use, online service developed just for **PediaLean™** parents — and you'll find a place where all your questions will be answered by our staff of MDs, PhDs, Registered Dietitians, and Exercise Specialists — each dedicated to help you and your child succeed.

You get a personalized, easy-to-follow eating and exercise plan for your child or children, that takes into account your child's gender, height, weight, and age (there's even a personalized weight-control plan for you). You'll get answers from professionals who know what you and your child are experiencing, and discover tips for getting your child motivated, important medical information on all aspects of children's health as well as practical answers to difficult problems — like how to maintain good nutrition using today's fast foods.

But that's not all. The most popular feature of **WeightLossForChildren.com** is our wonderful Parents Only Message Board and Chat Room — a place of compassion and practical help from a community of parents who have walked in your shoes... who understand how you feel because they've been there themselves. You will love it!

### A Winning Combination

The **PediaLean™/WeightLossForChildren.com** combination is a revolutionary approach to children's weight control that, simply stated, can not and will not fail. So get **PediaLean™** today, then log on to [www.WeightLossForChildren.com](http://www.WeightLossForChildren.com) and begin a new life of health, happiness, security, and confidence for both you and your child. You will not be disappointed!

Of course, **PediaLean™** comes with Klein-Becker's 100% Unconditional Money-Back Guarantee: if for any reason you are not totally satisfied with **PediaLean™**, just return the empty bottle within 30 days for a full, prompt refund — no questions asked!

**Call: 1-800-617-6080 ext. PL100**  
Visit online at [www.PediaLean.com](http://www.PediaLean.com)



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[www.KleinBecker.com](http://www.KleinBecker.com)

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**120 Capsules**  
Approx. 30-day Supply



"It's just baby fat," "She'll grow out of it," and "Oh, but just a growing boy..." these are the traditional excuses parents use to justify their child's overweight condition.

The old excuses can no longer stand... especially now that there is a safe, natural weight-loss compound designed and developed specifically for children. Combined with a proactive program specifically created to support both parent and child — this natural weight-control compound resulted in significant weight loss in virtually every child studied. For your child's sake, for peace, calm, and most of all, for the advantage of this clinically proven solution."

Dr. Mahabir Chavara, Ph.D., D.O. Director of Women's Health, Klein-Becker usa

### When Your Child Needs More Than Diet And Exercise.

#### Clinically Proven Safe and Effective

**Study Design** To evaluate the efficacy of **PediaLean™**, 20 children who completed the study, 12 males and 8 females (average age 10 years and 2 months (range 5.5-15.5)), with average excess weight of 61.1 lbs (range 30.1-100.0) (p < 0.0001). In conjunction with a suggested macronutrient diet for the age and size of each child (based 100% protein, 20% healthy fats, carbohydrate), and modest physical exercise, were then compared to 20 controls (average excess weight of 60.2 lbs (range 30.1-100.0), average age of 11.1 years) for whom only diet and physical exercise were advised.

**Results** After eight weeks, the 20 **PediaLean™** children showed a drop of excess body weight from 61.1 lbs (range 30.1-100.0) (p < 0.0001). Specifically, for these kids went from an excess weight of 61.1 lbs (range 30.1-100.0) to 50.1 lbs (range 20.1-100.0) (p < 0.0001) and the boys from 55.2 lbs (range 30.1-100.0) to 45.1 lbs (range 20.1-100.0) (p < 0.0001). In the Control Group, no meaningful decrease occurred (51.1 lbs (range 30.1-100.0) to 50.1 lbs (range 20.1-100.0), p > 0.05).

More importantly, the weight loss persisted. After a 4-6 month follow-up, the excess body weight of the children who used **PediaLean™** continued to decrease significantly (**PediaLean™** 48.1 lbs (range 20.1-100.0) vs Control 50.1 lbs (range 20.1-100.0), p < 0.0001). What does this mean for the English? Children who used **PediaLean™** along with a healthy, but not calorie-restricted, diet and modest exercise lost an incredible 20% of their excess body weight. Those who followed the same diet and exercise program, but did not take **PediaLean™**, failed to lose any significant excess weight at all. In other words, the only difference between success and failure was **PediaLean™**.

\***PediaLean™** is 100% Polysaccharide... the U.S. trademark for the proprietary, micronized, high molecular weight fiber used in the clinical trial.

# EXHIBIT K

**Jeff Julander**

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**From:** Gary Sandberg  
**Sent:** Thursday, September 25, 2003 3:08 PM  
**To:** 'Scott Ferguson'  
**Subject:** RE: 120 sec Leptoprin ad& Duane reade

Scott,  
 I was reviewing the data sent. Questions: I'm confused, missing data.

1) We recorded the following on Duane Reade for Radio and TV:  
 60 Second Radio ISCI ZPTK0170  
 60 TV Old Lady ISCI ZPTK0166  
 60 TV Politician ISCI ZPTK0167  
 60 TV Professor ISCI ZPTK0168  
 30 TV Spot ISCI ZPTK0160

I see only one of these spots 30 sec being used, what happened to the rotation of the commercials for TV and Radio.

Please shed some light.

Gary

-----Original Message-----

From: Scott Ferguson [mailto:scott@pkpf.com]  
 Sent: Thursday, September 25, 2003 3:00 PM  
 To: 'Gary Sandberg'  
 Cc: 'William Hung'; 'Andrew Broussard'; 'Lori Jacobus'  
 Subject: RE: 120 sec Leptoprin ad& Duane reade

Dear Gary

Just let me know re the VHS.

Also, attached is the Duane Reade tagged spots W/Price and W/out price as discussed.

Thanks  
 Scott

-----Original Message-----

From: Gary Sandberg [mailto:Gary@mjstc.net]  
 Sent: Thursday, September 25, 2003 12:40 PM  
 To: Jeff Ostler  
 Cc: 'scott@pkpf.net'  
 Subject: RE: 120 sec Leptoprin ad

If you want an additional 120 TV Leptoprin copy, I can have PKPF produce a VHS Tape one and bring it with them on Wed next week when they come.

Let me know.

Thanks

Gary

> -----Original Message-----

> From: Jeff Ostler  
 > Sent: Thursday, September 25, 2003 1:20 PM  
 > To: Gary Sandberg  
 > Subject: 120 sec Leptoprin ad  
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